

COMMISSION OF THE EUROPEAN COMMUNITIES

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Draft

DECISION OF THE ACP-EEC CUSTOMS COOPERATION COMMITTEE

derogating from the definition of the concept of "originating products"
to take account of the special situation of Mauritius
with regard to its production of canned tuna

(submitted to the Council by the Commission)

COM(85) 303 final

EXPLANATORY NOTE

Since 1977, Mauritius has been granted a series of derogations from the rules of origin governing its exports of canned tuna to the Community, under the Lomé Convention. These derogations resulted from the difficulties encountered by the single canning plant on the island in supplying itself with tuna from ACP or Community states.

In 1979 this situation, which results from a still unreliable fishing environment in the Indian Ocean, was partially improved by the Mauritian tuna canning company's acquisition of a fishing vessel. While the catch of native fish was increased and regularized the vessel's capacity was not sufficient to bring the yield of the Mauritian industry up to a minimum level. On the basis of the latest derogations given, Mauritius has used tuna originating from the Maldives, a neighbouring country which is on the list of least developed countries.

The latest derogation granted to Mauritius was for a short period of seven months, with a view to covering the period to the end of the second Lomé Convention. It expired therefore with Lomé II on 28 February 1985 and on that date the ACP States presented a request (*) for an extension on behalf of Mauritius based on transitional measures and on the future Lomé III Convention.

Under the terms of this request, Mauritius is seeking the renewal of the derogation for a three-year period, plus a possible extension for two years, in accordance with the procedure laid down (automatic renewal, unless one of the parties objects), for a quantity of 1 000 tonnes of preserved tuna per annum.

It has also requested that there be no restriction as to the origin of the imported fish.

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(*) Letter from Mr. JOHNSON, Co-Chairman of the ACP-EEC Customs Cooperation Committee to Mr. KLEIN (28 February 1985). Ref. ACP/64/7/(1)/85.

The reasons given by Mauritius are as follows :

- the situation as regards supplies of tuna in the region has not improved ; the Mauritian company has been unable to obtain fish supplies from Community vessels fishing in the exclusive economic zone of the Seychelles, as these do not offer the guaranteed regularity necessary.
- the conditions for provisioning from the Maldives are still unreliable with regard to both quantity and quality ; moreover, the Mauritian company has found difficulties in negotiating acceptable contracts with the Maldives authorities.
- the intake of native fish by the Mauritian vessel, although it has obtained a more regular supply since its authorization to fish in the Seychelles waters, is insufficient.
- as the financial situation of the Mauritian canning company is still unsteady, it cannot consider the purchase of a second fishing vessel just now and the jobs of the workforce (389) cannot be safeguarded without a relatively long derogation.

During the negotiations leading up to the renewal of the Lomé Convention, a great stumbling block in the discussions was the question of rules of origin governing fishery products ; the Community was able to avoid fundamental changes only by undertaking, under Annex XXX in particular, to examine in a positive spirit the requests for derogations presented by the ACP States. Although the Mauritian request does not come under the criteria of the declaration in Annex III, the ACP States will attach special significance to

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the way in which it is handled, in that this presents the first and only request made regarding fishing matters since that time. This facet is of central importance in the light of the re-examination of matters relating to origin as applied to fishing which has been planned for the first year of the Convention's implementation.

For these reasons the Commission proposes to respond favourably to the Mauritian request, as follows :

- (i) the new derogation will be implemented from 1 March 1985 for a period of three years, in accordance with the procedure provided for in Article 30 (8)(a) of Protocol 1 to Lomé III.

The Commission is of the opinion that it would be right to give full effect to the new provisions of the Convention in order to demonstrate the Community's goodwill in this matter to the ACP States ; taking into account the perspective of the enlargement, it does not consider that the possibility or not of a renewal can be judged at this stage.

- (ii) the annual ceiling will be 1 000 tonnes of canned tuna, -

This amount is the same as in the past and represents a tiny percentage of total Community imports.

- (iii) only fish originating in developing countries may be used, as was the case under the last derogation.

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of

derogating from the definition of the concept of "originating products" to take account of the special situation of Mauritius with regard to its production of canned tuna

THE CUSTOMS COOPERATION COMMITTEE

Having regard to the second ACP-EEC Convention, signed at Lomé on 31 October 1979,

Having regard to Council Regulation (EEC) No 485/85 of 26 February 1985 concerning the application of Decision No 2/85 of the ACP-EEC Council of Mauritius on transitional measures valid from 1 March 1985,¹

Whereas Decision No 2/85 states in Article 4 that the provisions concerning the procedure for derogating from the rules of origin contained in Article 30 of Protocol 1 to the third ACP-EEC Convention, signed in Lomé on 8 December 1984, are to be applied in advance as from 1 March 1985;

Whereas Article 30 of Protocol 1 to the third Convention concerning the definition of the concept of originating products and methods of administrative cooperation makes provision for derogations to be made from the rules of origin by the Customs Cooperation Committee, in particular to facilitate the development of existing industries or the creation of new industries;

Whereas the African, Caribbean and Pacific (ACP) States have submitted a request from the Government of Mauritius for a derogation from the definition set out in Protocol 1 in respect of canned tuna produced by Mauritius;

Whereas, in order to maintain its existing fishery industry and to take the measures necessary for its finished products to obtain originating status, Mauritius has from 1 August 1984 to 28 February 1985 benefited from the definition set out in Protocol 1 for canned tuna;

Whereas Mauritius has already purchased a vessel with a view to supplying the canneries with raw fish for its production of canned tuna;

(1) OJ No L 61 of 1.3.1985, p.1

Whereas this vessel, while increasing its catches steadily, is not in a position to supply sufficient quantities of tuna fish for the canneries; whereas the undertaking concerned intends making use of a second fishing vessel within the coming years if experience shows that further supplies of originating fish cannot be guaranteed;

Whereas Mauritius has been unable to obtain sufficient supplies of fish originating in other ACP States; whereas the Mauritius canning industry therefore continues to be dependent upon supplies of tuna fish from third countries in order to continue its exports of canned tuna to the Community;

Whereas it is possible for Mauritius to meet its tuna fish requirements for the canneries through supplies from other developing countries; whereas, pursuant to Article 30 (5) of Protocol 1, the examination of a

request for a derogation should in particular take into account such a possibility;

Whereas in these circumstances a temporary derogation from the definition of the concept of originating products should be accorded to Mauritius in accordance with Article 30(8) of Protocol 1
HAS DECIDED AS FOLLOWS:

Article 1

By way of derogation from the special provisions of List A in Annex II to Protocol 1, canned tuna falling within heading No ex 16.04 of the Common Customs Tariff, manufactured in Mauritius from tuna originating in other developing countries shall be considered as originating in Mauritius under the following conditions.

Article 2

The derogation provided for in Article 1 shall relate to an annual quantity of 1000 tonnes of canned tuna falling within heading No ex 16.04 of the Common Customs Tariff and exported from Mauritius between 1 March 1985 and 29 February 1988.

Article 3

The competent authorities of Mauritius shall take the necessary steps to ensure that the tuna used in the manufacture of the canned tuna referred to in Article 1 originates in other developing countries. These authorities shall also carry out quantitative checks on exports of the products referred to in Article 2 and shall forward to the Commission every three months a statement of the quantities in respect of which movement certificates BUR 1 have been issued on the basis of this Decision.

Article 4

The ACP States, the Member States and the Community shall be bound, each to the extent to which it is concerned, to take the measures necessary to implement this Decision.

Article 5

This Decision shall enter into force on the day of its adoption.

It shall apply from 1 March 1985. It shall cease to apply on 28 February 1986 if the third ACP-EEC Convention has not entered into force by that date.

Done at Brussels

For the Customs
Cooperation Committee
ACP-EEC

The Chairman